

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

In the Matter of the Appointment of a
Custodian for the Law Practice of

LORI E. DEVENY

Case No. 18CV48680

**MOTION OF STEPHANIE VOLIN TO
UNSEAL COURT RECORDS**

Oral Argument by Telecommunication
Requested

UTCR 5.050 STATEMENT

Movant Stephanie Volin (hereafter “Volin”) requests oral argument and estimates that 30 minutes will be required for such. Movant does not request official court reporting services. The names and telephone numbers of the attorneys for the parties served with this motion are as follows:

Stephanie Volin
(973) 936-0687

Movant
Pro Se

Susan T. Alterman
(503) 222-3531
Attorney for Petitioner
Oregon State Bar

Amber A. Hollister
(503) 431-6312
General Counsel
Oregon State Bar

1 **I. MOTION**

2 Volin respectfully moves for an order unsealing documents filed with this Court on or
3 about April 30, 2019.

4 The Register of Actions in this matter does not indicate whether Petitioner (hereafter “the
5 Bar”) submitted the Motion for Order to Seal with a supporting affidavit or declaration, or
6 whether the [Proposed] Order Regarding Authority as Custodian was granted or denied,
7 therefore Volin is unable to determine the nature, identity, number, or authenticity of the sealed
8 documents in the court file that relate to the Bar’s Motion for Order to Seal.

9 By this motion, Volin is asking the court to unseal, and to make available for public
10 inspection, the following documents:

- 11 1- Any affidavit or declaration filed in support of the Motion for Order Allowing
12 Material Related to Pending Criminal Investigation to be Filed Under Seal
- 13 2- Motion for Order Regarding Authority as Custodian, with exhibits and
14 attachments
- 15 3- Any affidavit or declaration filed in support of the Motion for Order
16 Regarding Authority as Custodian
- 17 4- [Proposed] Order Regarding Authority as Custodian
- 18 5- Proof of service by the Bar upon Lori E. Deveny or her attorney, Wayne
19 Mackeson, for any and all material listed above
- 20 6- The granted or denied Order Regarding Authority as Custodian
- 21 7- All other documents submitted in relation to the above, or generated by the
22 court in relation thereof.

23 **II. ARGUMENT**

24 **A. Volin has standing to make this motion**

25 Article I, section 10 of the Oregon Constitution provides that “No court shall be secret,
26 but justice shall be administered openly and without purchase, completely and without delay.”
27 The Oregon Supreme Court has held that: “[m]embers of the news media and public may assert
28 in court in their own behalf the open courts requirement of the Oregon Constitution.” *Oregonian
Publishing Co. v. O’Leary*, 303 Or 297, 301-02, 736 P2d 173 (1987).

1 Volin is an independent investigative journalist and writer with a history of providing
2 information about the Oregon State Bar and Oregon courts to the public, both in print and
3 electronic media. Volin’s work is archived on Medium, Good Men Project, and the Sellwood
4 Bee, a paper that is published by Pamplin Media Group. As a journalist, Volin is acting in the
5 public interest by moving to unseal information which will subsequently be published. Volin is
6 also a member of the public.

7 **B. Lack of jurisdiction**

8 ORS 9.725 (2) states that:

9 “The court has jurisdiction over that portion of the files, records and property of
10 the affected attorney for the purposes of ORS 9.705 to 9.757 *as established in the*
11 *order, and may make all orders necessary or appropriate to protect the interest of*
the affected attorney, the clients of the affected attorney and the public.”
[emphasis added]

12 This Court’s Limited Judgment Appointing Custodian of a Law Practice entered on
13 October 25, 2018 found that it had sole jurisdiction “to protect the interests of the public, and, in
14 particular, Deveny’s clients,” and ordered that:

15 “Pursuant to ORS 9.720, the Oregon State Bar *shall take immediate possession of*
16 *Deveny’s lawyer trust account and all client property, including legal files,*
17 *electronically stored information and all other data of any type and kind, client*
trust funds, and any other client property, as well as all books, records, funds, and
property used in Deveny’s law practice.” [emphasis added]

18 There is no indication that the sealed material includes, or indeed has anything to do with,
19 the specific, jurisdictional materials before the Court, i.e. the material from Deveny’s law
20 practice that the Bar was ordered to take immediate possession of.

21 Jurisdiction under ORS 9.725 does not extend to material outside the lawyer’s practice,
22 or to matters merely surrounding or suggesting the specific materials listed.

23 It cannot include material consisting solely of Susan Alterman’s opinions, arguments, or
24 desired outcomes regarding unidentified “material related to” unspecified pending criminal
25 investigations, filed pursuant to an unspecified “request of law enforcement” made by a lawyer
26 not representing law enforcement, without serving a copy on any person or agency—based on an
27 unsupported and uncertified claim by claim that the unknown material is “confidential.”

1 In other words, the Bar cannot reimagine the specific, limited jurisdiction provided under
2 ORS 9.725 as a license to create and file secret court documents. Particularly ORS 9.725 cannot
3 provide a basis of jurisdiction to support a secret court order regarding unknown materials from
4 no particular source.

5 ORS 9.725 does provide jurisdiction and a venue for the Bar to account for its custody of
6 Deveny's practice when the materials specified under 9.720 are regularly found to be in
7 Deveny's possession. Few if any records provide evidence that the Bar ever has ever held any
8 quantity of client records not obtained from Deveny individually, as if provided to the Bar on
9 demand to resolve incoming Client Security Fund claims. The client files are regularly missing
material. Several client files have been lost.

10 **C. The Bar's Motion to Seal is defective**

11 Multnomah Supplemental Local Rule 5.165 is brief and plainly worded, leaving no room
12 for misinterpretation by the Bar. SLR 5.165 (2) states that:

13 "A party seeking to file under seal documents designated as CONFIDENTIAL
14 under this protective order must file a motion to file documents under seal that
15 specifies: (a) the statutory authority for sealing the documents; (b) the reasons for
16 protecting the documents from public inspection; and (c) a description of the
documents to be sealed. The judge hearing the motion may require the moving
party to submit the documents to the court for in camera review."

17 The Bar's motion to seal was deficient in nearly every regard, failing to cite the statutory
18 authority for the motion, failing to describe the contents of the documents, and claiming that the
19 motion was filed "pursuant to request of law enforcement," evidently without providing an
20 affidavit, declaration, or exhibit to support that claim. The Register of Actions shows that there
21 was no hearing regarding this motion, therefore no oral arguments.

22 The sealed motion and proposed order were filed in noncompliance with SLR 5.165 such
23 that the proposed protective order should have been rejected and returned to the party.

24 **D. The Bar did not follow this Court's orders**

25 The Bar did not "take immediate possession of Deveny's lawyer trust account and all
26 client property, including legal files, electronically stored information and all other data of any
27 type and kind, client trust funds, and any other client property, as well as all books, records,
28 funds, and property used in Deveny's law practice," as ordered by this Court.

1 The Bar's failure to take immediate possession in October 2018 of Deveny's files is
2 evidenced by reviewing Client Security Fund claims against Deveny, submitted by Amber
3 Hollister for the Board of Governor's approval on April 12 and June 21, 2019.¹ In one claim, the
4 Bar investigator admitted that the Bar did "not have access to Deveny's file(s)" for the victim
5 and had asked Deveny for that victim's file in March 2019. Deveny reported through her
6 attorney that the file was sent to the victim's new attorney, but this proved to be false. [**Exhibit**
7 **A** page 4]. In another claim, the Bar investigator stated that the victim did not learn of Deveny's
8 resignation or her settlement of his case until "[Portland Police] Detective Sitton contacted him
9 in December 2018." [**Exhibit B** page 2]. In a third claim, Deveny was negotiating claims past
10 her Form B Resignation, and settling claims and handling client funds—presumably through her
11 IOLTA—two weeks *after* this Court's order, and one week *after* the Bar served Wells Fargo
with a copy of this Court's order. [**Exhibit C** page 1].

12 The Bar's failure to take immediate possession of Deveny's files in October 2018 is also
13 evidenced by the conditions of release entered in United States District Court Case no. 3:19-cr-
14 00183 on May 13, 2019, which ordered that Deveny "surrender all client file and client
15 information (paper or electronic) to the Oregon State Bar."

16 Additionally, information contained in the Bar's Motion for Order Regarding Authority
17 as Custodian dated June 27, 2019 reveals that the Multnomah County District Attorney may
18 question whether the Bar has been forthcoming in identifying former clients of Deveny, and has
19 subpoenaed a list of their names and contact information.

20 **III. CONCLUSION**

21 The sealed motion and proposed order represent an ongoing shell game that the Bar has
22 played since October 2018 regarding Deveny's practice, in which her files are constantly turning
23 up where they are not supposed to be, and in which Deveny's IOLTA was shown to be accessed
24 by Deveny, to commit fraud and theft, two weeks after this Court ordered that the Bar be added
as a co-signer to the account.

26
27 ¹ Currently, there are 37 CSF claims against Deveny in various stages of investigation or approval,
although that number continues to increase.

1 Allowing the material filed on or about April 30, 2019 to remain sealed deprives the
2 public of the ability to review, understand, and assess the operations of the judicial system as it
3 pertains to the multiple proceedings that are currently underway against Lori E. Deveny.

4 Allowing the material to remain sealed also deprives the media and the public the right to
5 evaluate the actions, integrity, and competence of a state agency, the Oregon State Bar.

6 For the foregoing reasons, Volin requests that this Court grant this Motion to Unseal
7 Court Records filed and issued in this case

8 Dated this 7th day of July, 2019.

11 Respectfully submitted,

12 
13
14

15 Stephanie L. Volin
16 29 South Valley Road
17 West Orange, NJ 07052
18 (973) 936-0687
19 sllvolin@gmail.com
20
21
22
23
24
25
26
27
28

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 12, 2019
From: Amber Hollister, General Counsel
Re: CSF Claim No. 2019-08 Deveny (Shorten)

Action Requested

Consider Client Security Fund Committee's recommendation that the board grant claimant Barbara Shorten's claim of \$50,000 in the matter of CSF Claim No. 2019-08 Deveny (Shorten).

Discussion

Through her counsel, Stanley Gish, Claimant Barbara Shorten reports that she retained Ms. Deveny in September 2015 to represent her to recover damages for injuries sustained in a car accident on August 20, 2015. As a result of the accident, Ms. Shorten permanently lost the use of her legs and is now paraplegic.

Ms. Shorten recalls she agreed to a contingent fee agreement, in which Ms. Deveny was to receive one-third of the settlement. She never received a copy of the written fee agreement from Ms. Deveny.

On or about October 12, 2015, without Ms. Shorten's knowledge or consent, Deveny settled claimant's claim against MetLife and accepted a \$100,000 settlement check from Met Life in 2015. She deposited the check in her IOLTA trust account on or about October 27, 2015. Deveny did not disburse any of the \$100,000 check to Ms. Shorten or to OHSU, the other payee and lienholder listed on the check.

On or about January 21, 2016, Ms. Deveny settled an outstanding wage loss PIP claim for \$15,000 and applied the payment to Ms. Shorten's medical bills at OHSU. The PIP payment is not the subject of this claim.

Sometime in July 2018, after she had resigned from B from the bar, Ms. Deveny told Ms. Shorten that she received a settlement of some kind, but did not share the amount with Ms. Shorten. Ms. Shorten believed that Ms. Deveny would place any settlement proceeds in an income cap trust, with Deveny as trustee for Medicaid qualification purposes, but Ms. Deveny never did so.

The funds are no longer in Ms. Deveny's trust account and are alleged to have been stolen by Ms. Deveny. Through counsel, Ms. Deveny declined to participate in the CSF investigation and asserted her Fifth Amendment right against self-incrimination.

Ms. Deveny resigned Form B, effective July 26, 2018, while numerous disciplinary cases were pending.

At its March 2018 meeting, the Client Security Fund Committee reviewed Ms. Shorten's claim and unanimously voted to recommend that the Board reimburse her for \$50,000 of her loss. Ms. Shorten's claim would not ordinarily be eligible for reimbursement at this time, pursuant CSF Rule 2.1.6, because Ms. Deveny has not been found guilty of a crime and Ms. Shorten has not obtained a civil judgment against her. The Committee, however, voted to waive the requirement of CSF Rule 2.1.6 based on extreme hardship under CSF Rule 2.6, based upon her circumstances and the available evidence.

Mr. Gish seeks recovery of his attorney fees in this matter for an unknown amount from the CSF reimbursement. His hourly rate is \$240, and he has agreed to cap his fees at 20% of any funds recovered with a minimum \$1000 fee. Pursuant to Rule 2.5, the Committee considered the reasonableness of Mr. Gish's fee arrangement with Mr. Shorten and found that it was reasonable in theory, but the Committee was unable to determine whether the actual amount of the fee charged was reasonable because it had insufficient information. After the meeting, staff asked Mr. Gish for more information about his fee. He responded and stated he had spent 20.1 hours on the Shorten CSF matter, and his total fee, based on the agreed rate of \$240 per hour, is \$4,824.

Staff recommends that the board approve the claim, consistent with the CSF Committee's recommendation.

Client Security Fund Investigative Report

Re: CSF Claim No. 2019-8
Claimant: Barbara Jean Shorten
Lawyer: Lori Deveny
Investigator: Melissa May
Date: March 11, 2019

RECOMMENDATION

I recommended approval of Ms. Shorten's claim in the maximum allowable amount of \$50,000. The Claimant's loss related to this claim was \$100,000.

CLAIM INVESTIGATION SUMMARY

Lori Deveny was admitted to the Oregon State Bar in 1989. She was suspended on April 30, 2018, and her Form B resignation was accepted on July 26, 2018. Deveny is under investigation by federal and state law enforcement agencies.

Description of the Claim

Through her counsel, Stanley Gish, Barbara Jean Shorten alleges the following:

- Ms. Shorten was injured in a car accident on August 20, 2015. As a result of the accident, she permanently lost the use of her legs and now is paraplegic.
- Ms. Shorten retained Lori Deveny in September 2015. (No written fee agreement has been found; Ms. Shorten recalls agreeing to pay Deveny one-third of any amount recovered).
- Without Ms. Shorten's knowledge or consent, Deveny accepted a \$100,000 settlement check from MetLife in 2015.
- Deveny deposited that check in her IOLTA account.
- Deveny did not disburse any of the proceeds to Ms. Shorten or to OHSU (the other payee on the \$100,000 check).
- At the time of the application, Deveny had not returned Gish's messages regarding the subject matter of the Application for Reimbursement.¹

¹ Deveny has asserted her privilege against self-incrimination in this matter.

Investigation

I reviewed Ms. Shorten's Application for Reimbursement and attachments (including a copy of the \$100,000 check at issue), Ms. Shorten's OHSU patient billing ledger, and copies of text messages and emails between Ms. Shorten and Deveny. I also spoke with Ms. Shorten, her attorney (Stanley Gish), Deveny's attorney (Wayne Mackeson), OHSU billing department personnel, and Detective Brian Sitton of the Portland Police Bureau.

Work Performed by Deveny

We do not have access to Deveny's file(s) for Ms. Shorten.² Based on the information available, it appears that Deveny did the following.

1. Sought \$15,000 in wage loss benefits under Mr. Shorten's Personal Injury Protection ("PIP") coverage.³
2. Filed suit against the driver allegedly at fault and the owner of the other car (Multnomah Co. Case No. 17CV35905). That suit was dismissed "for want of prosecution" on January 4, 2018.⁴
3. Established an "income cap trust" (with Deveny as trustee) for Medicaid qualification purposes.⁵
4. Pursued a claim against MetLife (DBA Economy Preferred Insurance Company) for Uninsured Motorists ("UIM") Coverage. The \$100,000 Deveny received in settlement of the UIM claim is the subject of Ms. Shorten's Application for Reimbursement.

\$100,000 Settlement Check & Release

The "Paid Items Print" attached as Exhibit A shows a \$100,000 check issued by MetLife Auto & Home to "OHSI AND LORI DEVENY IN TRUST OF BARBARA SHORTEN." The check was dated October 12, 2015. Deveny endorsed the check by signing her name and adding "in trust for Barbara Shorten." A printed endorsement, purportedly by Oregon Health & Sciences University, also appears on the back of the check.⁶

² On 3/7/2019, Deveny reported via her attorney that "Ms. Shorten's file was sent to her new lawyer." As of 3/8/2019 date, Ms. Shorten's lawyer had not received the file

³ The \$15,000 PIP proceeds were applied to Ms. Shorten's medical bills at OHSU; this matter is not the subject of this claim.

⁴ This matter is not the subject of this claim.

⁵ This matter is not the subject of this claim. Ms. Shorten's attorney is attempting to remove Deveny as trustee of the income cap trust and to gain access to that account.

⁶ According to Detective Sitton, the OHSU billing department does not have a record of endorsing the check, and cannot find a record of the number referenced in the endorsement. They also indicated that it is not their usual practice to endorse a check and return it to a third party, such as Deveny, for deposit.

The “Receipt and Release under Uninsured Motorists Coverage” attached as Exhibit B is dated September 21, 2015. It was signed by “witnesses” but was not signed by Ms. Shorten.

According to Detective Sitton, Deveny deposited the \$100,000 check in her IOLTA account. Exhibit A shows that the funds were paid on October 27, 2015.

Ms. Shorten did not receive any funds from that settlement. A review of the OHSU patient billing ledger for Ms. Shorten shows that no funds from any individuals (including Lori Deveny) were applied to Ms. Shorten’s bills. The \$15,000 PIP funds were applied to Ms. Shorten’s medical bills on January 21, 2016. The only other payments shown on the ledger were payments by medical insurance companies (Providence Health and Medicare).⁷

Detective Sitton indicated that the balance in Deveny’s IOLTA account is minimal. Thus, it appears that Deveny converted \$100,000 of Ms. Shorten’s funds.

Efforts to Collect

Stanley Gish attempted to contact Deveny to discuss this matter but did not receive a response. Public records indicate that, although Deveny owns a home in Portland, there are foreclosure actions and multiple civil suits pending against Deveny.

Timeline Summary:

8/20/2015	Auto Accident
Sept. 2015	Shorten retained Deveny
10/12/2015	MetLife issued \$100,000 check for UIM coverage
10/27/2015	\$100,000 deposited/funds paid to Deveny’s IOLTA account
2017-2018	Various text messages between Deveny and Shorten (mostly re: income cap trust transactions)
4/30/2018	Oregon Supreme Court suspended Deveny’s license to practice law
5/27/2018	Deveny signed Form B resignation
c. July 2018	Deveny told Shorten that she received a settlement (unclear whether she was referring to the UIM settlement or settlement of the matter described in Multnomah Co. case no. 17CV35905)
7/26/2018	Oregon Supreme Court accepted Deveny’s Form B resignation
10/25/2018	Deveny’s last known communication with Shorten (via text message)
Dec. 2018	Detective Sitton informed Shorten of the \$100,000 check deposit (and lack of corresponding disbursement)
2/12/2019	Shorten filed CSF Application for Reimbursement

⁷ The ledger shows a \$0 balance. Ms. Shorten indicated that the phone calls from collection agencies have tapered off over the last few months; it is unclear whether there are additional medical debts or collection matters at this time.

FINDINGS AND CONCLUSIONS

1. Claimant Barbara Jean Shorten is the injured client, and her loss was caused by Lori Deveny's dishonest conduct. CSF Rules 1.4, 2.1.1, and 2.1.2.
2. Claimant's loss is not covered by any similar fund in another state. CSF Rule 2.1.3.
3. Claimant's loss was not incurred by a financial institution covered by a "banker's blanket bond" or similar insurance or surety contract. CSF Rule 2.1.4.
4. The loss arose from, and was because of, an established lawyer-client relationship. CSF Rule 2.1.5.
5. Deveny has not been found guilty of a crime at this time, nor has Ms. Shorten obtained a civil judgment against Deveny. I recommend that the committee waive CSF Rule 2.1.6, however, as discussed below.
6. Claimant has made a good-faith effort to collect the amount claimed. CSF Rule 2.1.7.
7. Claimant's Application for Reimbursement was timely (filed within two years of the date she learned of the loss). CSF Rule 2.1.8.
8. Claimant's loss arose from the lawyer's practice of law in Oregon. CSF Rule 2.1.9.
9. CSF Rules 2.2 – 2.4 do not apply. Claimant is not seeking reimbursement of a legal fee paid, has not received equivalent legal services by another attorney without cost to the Claimant, and is not seeking attorney's fees or other items listed in CSF Rule 2.4.
10. Claimant retained attorney Stanley Gish to assist with this claim. A copy of their fee agreement was submitted with the Application for Reimbursement and is attached as Exhibit C. Gish's rate is \$240/hour, subject to a cap of 20% of any funds recovered. The fee agreement appears reasonable, and I recommend that the CSF committee approve the payment of the fee from the award. CSF Rule 2.5.
11. Although the committee could deny the claim because CSF Rule 2.1.6 has not been satisfied at this time, approval of the claim in the amount of \$50,000 is appropriate because Ms. Shorten has suffered extreme hardship, and the circumstances are special and unusual. CSF Rule 2.6. I recommend that the committee waive CSF Rule 2.1.6. Based on the volume and value of claims against this lawyer, it seems unlikely that she will be able to satisfy any civil judgment in Ms. Shorten's favor. It likely would be a waste of resources for Ms. Shorten to pursue a civil claim at this time.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 21, 2019
From: Amber Hollister, General Counsel
Re: CSF Claim No. 2019-20 Deveny (Wilson)

Action Requested

Consider Client Security Fund Committee's recommendation that the board grant claimant Ross Wilson's claim of \$15,667.00 in the matter of CSF Claim No. 2019-04 Deveny (Wilson).

Discussion

Claimant Wilson hired Ms. Deveny to represent her in obtaining damages for injuries sustained in an August 2015 motor vehicle accident. He agreed to a contingent fee agreement, in which Ms. Deveny was to receive one-third of the settlement.

In October 2016, Ms. Deveny settled the case for \$23,500 with Safeco Insurance, without Mr. Wilson's knowledge or consent. Ms. Deveny agreed to settle a medical provider's lien with the proceeds, but never did so. In August 2018, Ms. Deveny told Mr. Wilson his case had been settled for \$20,000, but he never received any proceeds.

Ms. Deveny resigned Form B, effective July 26, 2018, while numerous disciplinary cases were pending. In 2018, Mr. Wilson was under the impression his case was still pending until the Portland Police Department contacted him about Ms. Deveny's alleged theft.

At its May 11, 2019 meeting, the Client Security Fund Committee reviewed Mr. Wilson's claim and unanimously voted to recommend that the Board reimburse him for \$15,667.00 of his loss. Mr. Wilson's claim would not ordinarily be eligible for reimbursement at this time, pursuant to CSF Rule 2.1.6, because Ms. Deveny has not been found guilty of a crime and Mr. Wilson has not obtained a civil judgment against her. The Committee, however, voted to waive the requirement of CSF Rule 2.1.6 based on extreme hardship under CSF Rule 2.6, based upon her circumstances and the available evidence.

Staff recommends that the board approve the claim, consistent with the CSF Committee's recommendation.

CLIENT SECURITY FUND INVESTIGATIVE REPORT

Report submitted May 7, 2019

CLAIM: # 2019-20
CLAIMANT: Ross Anthony Wilson
LAWYER: Lori Deveny
INVESTIGATOR: Valerie Wright

RECOMMENDATION

I recommend approval of the claim in the amount of \$15,667.

CLAIM INVESTIGATION AND SUMMARY

In August of 2015, Mr. Wilson was involved in a car accident. He hired Lori Deveny to represent his interests in settlement of a claim against the other driver's insurance company, First National Insurance Company of America (Safeco). For the next three years he believed that Lori Deveny was working on his case. Mr. Wilson recalls that in August of 2018 he spoke with Ms. Deveny for the last time at which time she told him that the claim had been settled for \$20,000 and she was waiting to get the check in the mail. (Mr. Wilson told me that he felt as though \$20,000 was a fair amount for the case.)

Mr. Wilson was unaware that, on October 6, 2016, Safeco sent Ms. Deveny a letter confirming their agreement with Ms. Deveny to settle Mr. Wilson's claim for the total amount of \$23,500. According to the October 6th letter (Exhibit 1) Ms. Deveny was agreeing to provide Safeco with a letter from Bridgeport Chiropractic giving Safeco authority to disburse funds directly to Deveny for Deveny to address their lien. On October 11th, 2016 Safeco sent Deveny a "Release and Indemnification Agreement" which was returned to Safeco, ostensibly signed by Mr. Wilson. (Exhibit 2) Finally, on October 24, 2016, records show that Deveny deposited a check for \$23,500 into her IOLTA trust account check at Wells Fargo. (Exhibit 3)

Not until Detective Sitton contacted him in December 2018 did Mr. Wilson learn that settlement had occurred two years earlier. When shown the Release (Ex. 2) Mr. Wilson denied ever having signed it. Mr. Wilson did not receive any portion of the settlement and the Bridgeport Chiropractic lien was not addressed by Deveny.

In his claim, Mr. Wilson requested \$48,690.68. To support his claim Mr. Wilson submitted the following:

Notarized statement from his uncle, Jim Shierman, regarding a loan to Ross.	\$3,700.00
Notarized statement from his mother, Sandra Wilson, regarding a loan to Ross.	\$4,500.00
An Aamco Transmission shop repair order plus 8 receipts, totaling:	\$6,071.68
Bill from Bridge Chiropractic – with the word “massage” added.	\$2,415.00
Bill from Bridge Chiropractic – with the word “chiropractic” added.	\$3,704.00
<i>He also included two receipts for payments to Bridge Chiropractic, of \$100 each, which I believe were payments towards the above bills.</i>	0.00
SUBTOTAL	\$20,390.68

Mr. Wilson and I spoke at some length on April 27, 2019, and he told me during that conversation that he had also paid:

His insurance deductible	\$500.00
Fees for a rental car after the accident	\$2,000.00
TOTAL	\$22,890.68

I apologized to Mr. Wilson both personally but also as a member of the Bar and on behalf of the Client Security. We agreed that no one should have received the kind of treatment that he did from Lori Deveny. After listening to him tell me about his case I explained to him that there were limitations on what the CSF could do for him. I explained that our mandate is simply to reimburse people for amounts of money to which they were entitled and which their dishonest lawyer kept from them.

I sent him a letter via email, the day after our phone call, letting him know about the PLF and the Bar’s modest means program. I explained to him that the PLF could look into the malpractice issue and an attorney through Modest Means could advise him as to whether there were any other ways that he might be able to successfully sue Ms. Deveny. I advised Mr. Wilson, however, that he would have to pursue those lines of inquiry himself. My letter also included the information about the fact that filing an Ethics complaint through the SPRB would not be helpful as Ms. Deveny is no longer licensed to practice law and will never be again, given how she withdrew.

I let Mr. Wilson know that although he felt that he was entitled to much more money than what I would be recommending, that his requests went beyond the fund’s mission or ability.

The fee agreement that Mr. Wilson had with Ms. Deveny called for her to pay him 2/3 of any amount collected in settlement. 2/3 of \$23,500 is \$15,667.

FINDINGS AND CONCLUSIONS

1. The claim is timely – having been filed with the Bar within two years of the date the claimant knew or should have known, in the exercise of due diligence, of the loss. 2.8
2. Claimant is the injured client. 2.1
3. The loss was caused by the lawyer's dishonest conduct. 2.2
4. The loss is not covered by any similar fund in another state. 2.3
5. The loss was not due to a financial institution covered by a "banker's blanket bond" or similar insurance or surety contract. 2.1.4
6. The loss did arise from and was because of the failure to account for money or property entrusted to the lawyer in connection with the lawyer's practice of law or while acting as a fiduciary in a matter related to the lawyer's practice of law. 2.5.2
7. The loss also arose from the lawyer's dishonesty and the lawyer has resigned from the Bar. 2.6.3
8. A good faith effort by the claimant to recover the money would be useless under the circumstances of this attorney's actions and therefore the investigator recommends that the CSF waive this requirement in this circumstance. 2.7
9. The loss did arise from the lawyer's practice of law in Oregon. 2.1.9
10. The Claimant did not receive equivalent legal services by another attorney without cost to the Claimant. 2.3

I recommend payment to Claimant of \$15,667.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 12, 2019
From: Amber Hollister, General Counsel
Re: CSF Claim No. 2018-84 Deveny (Burk)

Action Requested

Consider Client Security Fund Committee's recommendation that the board grant claimant Kimberlee Jo Burk's claim of \$20,000 in the matter of CSF Claim No. 2018-84 Deveny (Burk).

Discussion

On March 31, 2016, Ms. Burk retained Ms. Deveny to represent her on three separate MVA claims that occurred in 2014, 2015 and 2016. She agreed to a contingent fee agreement, in which Ms. Deveny was to receive one-third of the settlement.

Ms. Deveny settled all three cases as follows:

1. MVA on 12/10/14 – settled for \$15,000 prior to 5/19/17
2. MVA on 3/27/15 – settled with Allstate for \$25,000 on 11/8/18
3. MVA on 2/19/16 – settled with State Farm for \$5,000 on 8/10/17

Ms. Burk received \$12,000 in settlement for the first MVA, but she did not receive any settlement amount for the 2015 and 2016 MVAs. Accordingly, the investigator calculated her loss as \$20,000 (2/3 of \$30,000).

Ms. Deveny resigned Form B, effective July 26, 2018, while numerous disciplinary cases were pending. A day later, on July 27, 2018, Ms. Deveny asked Ms. Burk to come to her office to sign a release in the 2015 MVA. She did so and never received any of the settlement funds.

Ms. Burk reports she is working with the Portland Police Department regarding Ms. Deveny's alleged theft.

At its March 2018 meeting, the Client Security Fund Committee reviewed Ms. Burk's claim and unanimously voted to recommend that the Board reimburse her for \$20,000 of her loss. Ms. Burk's claim would not ordinarily be eligible for reimbursement at this time, pursuant CSF Rule 2.1.6, because Ms. Deveny has not been found guilty of a crime and Ms. Burk has not obtained a civil judgment against her. The Committee, however, voted to waive the requirement of CSF Rule 2.1.6 based on extreme hardship under CSF Rule 2.6, based upon her circumstances and the available evidence.

Staff recommends that the board approve the claim, consistent with the CSF Committee's recommendation.

1 I certify that on the 7th day of July, 2019, I electronically filed **MOTION OF**
2 **STEPHANIE VOLIN TO UNSEAL COURT RECORDS** in Multnomah County Circuit
Court Case No. **18CV48680** via the e-filing system.

3 I further certify that the following parties or counsels of record shall be served via official
4 e-filing receipt:

5 Susan Alterman
6 Kell Alterman & Runstein LLP
7 520 SW Yamhill St Ste 600
8 Portland, OR 97204
salterman@kelrun.com

9 Wayne Mackeson
10 Wayne Mackeson PC
11 714 Main Street, Suite 201
12 Oregon City, OR 97045
waynemackeson@waynemackeson.com

13 I further certify that the following interested parties have received **MOTION OF**
14 **STEPHANIE VOLIN TO UNSEAL COURT RECORDS** in Multnomah County Circuit
Court Case No. **18CV48680** by facsimile and/or email:

15 Detective Brian Sitton, Portland Police

16 Rod Underhill, Multnomah District Attorney

17 John Foote, Clackamas District Attorney

18 Claire Fay, Assistant United States Attorney

19
20
21 Dated this 7th day of July, 2019.

22
23 

24 Stephanie L. Volin
25 29 South Valley Road
26 West Orange, NJ 07052
27 (973) 936-0687
28 sllvolin@gmail.com